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No. 81-2150

IN THE

Supreme Court of the United States

October Term, 1982

JIM MCNEFF, INC., a California Corporation,

Petitioner,

vs.

FRANK L. TODD, *et al.*,

Respondents.

RESPONDENTS' OBJECTIONS TO MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* IN SUPPORT OF RESPONDENTS BY THE CARPENTERS TRUST FUNDS FOR SOUTHERN CALIFORNIA, THE CONSTRUCTION LABORERS TRUST FUNDS FOR SOUTHERN CALIFORNIA AND THE CEMENT MASONS TRUST FUNDS FOR SOUTHERN CALIFORNIA.

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Respondents Frank L. Todd, *et al.*, object to the filing of the Brief *amici curiae* in support of Respondents on behalf of the Carpenters Trust Funds for Southern California, the Construction Laborers Trust Funds for Southern California and the Cement Masons Trust Funds for Southern California and, therefore, file this opposition to the granting of the Motion for Leave to File Brief *amici curiae* in support of Respondents, on grounds as follows:

1. Although the proffered Brief *amici curiae* purports to support Respondents, the counsel of record for the *amici*

curiae has a conflict of interests in supporting the views of Respondents. Respondents are trustees of labor-management employee benefit trusts who frequently must file suits to recover delinquent payments due from employers. Counsel of record for these *amici curiae*, John H. Stephens, Esq., and the law firm of Cox, Castle & Nicholson, have been during the past ten years and are presently serving as counsel for defendant employers in suits brought by Respondents as plaintiffs. The duties of Mr. Stephens and the firm of Cox, Castle & Nicholson in representing such defendant employers have caused, and presently cause, them as counsel in those cases to make arguments and to seek the advancement of contentions which are adverse to the interests of Respondents, and which impinge upon the issues presented in this case.

2. Certain of the arguments and contentions set forth in the Brief *amici curiae* reflect the conflict of interests of counsel of record for the *amici curiae* by seeking to advance the interests of delinquent employers. Those arguments and contentions are viewed by Respondents as clearly erroneous, and as adverse to the views and interests of Respondents and similar employee benefit trusts.

3. The Brief *amici curiae* is untimely under Rule 36.2 and 36.3 of this Court, which requires the motion to be filed "within the time allowed for the filing of the brief of the party supported and if in support of neither party, within the time allowed for filing . . . petitioner's brief." Although the Brief *amici curiae* in question purportedly supports Respondents, the objectionable arguments described above do not, in fact, support Respondents. Therefore, the motion and the brief should have been filed, if at all, "within the time allowed for filing . . . petitioner's brief." Since the motion for leave to file the Brief *amici curiae* was not filed until the date Respondents' brief was filed, Respondents

would have no appropriate opportunity to answer the erroneous contentions made by the Brief *amici curiae* if the motion for leave to file the brief is granted.

Conclusion.

Based on the foregoing, the motion made on behalf of Carpenters Trust Funds, etc., *et al.*, for leave to file the Brief *amici curiae* in support of Respondents should be denied.

Dated: November 4, 1982.

Respectfully submitted,

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